

**SECOND AMENDMENT TO THE CITY OF PALM COAST**  
**SERVICES TWO PHASE AGREEMENT WITH**  
**AMERICAN TRAFFIC SOLUTIONS, INC.**

This Amendment No. 2 (the “Second Amendment”) to the City of Palm Coast Services Two Phase Agreement with American Traffic Solutions, Inc., regarding Request for Proposals (RFP) CM-07-02, pertaining Red Light Running Camera Enforcement System (the “Original Agreement”), executed on the 3rd day of December, 2007, by and between the **City of Palm Coast, Florida**, a municipal corporation (hereinafter “City”) and **American Traffic Solutions, Inc.** (hereinafter “Contractor”), as amended by that Amendment No. 1, to the City of Palm Coast Services Two Phase Agreement with American Traffic Solutions, Inc., executed on August 17, 2012, which Original Agreement and Amendment No. 1 are incorporated herein by this reference. The City and Contractor may individually be referred to as a “Party” and collectively as the “Parties.” This Second Amendment shall be effective on the date of the later Party’s execution hereof (the “Effective Date”).

**RECITALS**

**WHEREAS**, in addition to the Recitals provided for in the Original Agreement and Amendment No. 1, the parties recognize that thereafter events have occurred which cause the City and the Contractor to enter into this Second Amendment; and

**WHEREAS**, the City and the Contractor recognize that the Fourth District Court of Appeal, in *Arem v City of Hollywood*, has opined regarding the process for compliance with the *Mark Wandall Act*, Law of Florida 2010-80, which law took effect of July 1, 2010; and

**WHEREAS**, the City and the Contractor recognize that there exists or may exist litigation brought against the Contractor and the City arising out of allegations related to the Fourth District Court of Appeal’s decision referenced above; and,

**WHEREAS**, the Parties represent and affirm that the provisions of the Agreement provide a system whereby the Contractor properly assists and supports the efforts of the City in its police duties through implementation and maintenance of an automated traffic safety and enforcement program; and,

**WHEREAS**, the Parties further represent and affirm that the Contractor is subject to certain directives set forth as the business rules referenced below in Section 3 and may not, of itself, take any action in furtherance of the enforcement of any local ordinance without the direction of the City;

## TERMS AND CONDITIONS

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, as set forth in Amendment No. 1 and the Original Agreement, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and City agree that the Original Agreement, as modified by Amendment No. 1, shall be and hereby amended again and modified on the terms provided herein.

1. **Recitals.** The recitals set forth in the Original Agreement as well as the Amendment No. 1 and those set forth hereinabove, are true and correct and are incorporated into this Second Amendment by this reference.

2. **Length of Agreement.** Paragraph No. 4 of Amendment No. 1, which replaced Section 1 of the Original Agreement, is deleted and replaced as follows:

(a) This agreement shall expire on September 30, (Option A-2019 or Option B-2017).

(b) All provisions of this Agreement, as amended, which contain continuing obligations shall survive the expiration or termination of this Agreement, as amended.

3. **City's Rights and Responsibilities.** Section 6 of Amendment No. 1, which modified Section 14 of the Original Agreement, is amended and supplemented with the following:

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(o) The City and the Contractor shall comply with the process in accordance with the Business Rules adopted by the City and the Contractor concurrently with the execution hereof.

4. **Compensation.** Compensation as provided in Amendment No. 1 will continue with the City receiving \$\_\_\_\_\_ (Option A-2019 | \$700 or Option B-2017 | \$350) per camera system, based upon the number of cameras following this Second Amendment.

5. **Red Light Camera Systems.** Thirty (30) days from the complete execution of this Second Amendment, Contractor shall reduce the number of camera systems operated in accordance with the state statutes, to a total of 5. The location of these camera systems, as reduced hereby, shall be pursuant to Exhibit "A". The operation of these remaining camera systems shall be as otherwise provided in the Original Agreement, as amended by Amendment No. 1.

6. **Indemnity.** In addition to the duties and responsibilities set forth in Section 31, Indemnity, of the Original Agreement, City and Contractor each recognize the terms and context of that certain retention agreement with Weiss Serota Helfman Cole Bierman & Popok, P.L., the terms of which are accepted and agreed to by the City and ATS (the "Retention Agreement"). Such Retention Agreement shall govern the respective duties, obligations, and responsibilities of the City and ATS pertaining to legal challenges in which ATS and the City are both named as

defendants and are Arem-based claims, including but not limited to the consolidated putative class action claims in *Parker et al, v. American Traffic Solutions, Inc. et al.*

7. **Effect of Amendment on Agreement.** Except as expressly amended or modified by the terms of this Second Amendment, all terms of the Original Agreement and Amendment No. 1 shall remain in full force and effect. In the event of a conflict between the terms of this Second Amendment, the Original Agreement, and any other contract documents, the terms of this Second Amendment shall prevail and control.

8. **Entire Agreement.** The provisions of this Second Amendment, including the recitals, comprise all of the terms, conditions, agreements, and representations of the parties with respect to the subject matter hereof. All representations and promises made by any party to another, whether in writing or orally, concerning the subject matter of this Second Amendment are merged into this Second Amendment. Except as amended by this Second Amendment, the terms of the Original Agreement and Amendment No. 1 shall continue in full force and effect.

9. **Counterpart Execution.** This Second Amendment may be executed in one or more counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument. Each party represents and warrants that the representative signing this Second Amendment on its behalf has all right and authority to bind and commit that party to the terms and conditions of this Second Amendment.

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**IN WITNESS OF THE FOREGOING**, the parties have set their hands and seals the day and year first written above.

**AMERICAN TRAFFIC SOLUTIONS, LLC.**

By: \_\_\_\_\_  
David Roberts  
President & COO

Date: \_\_\_\_\_

*ATTEST:*

**CITY OF PALM COAST**

\_\_\_\_\_  
Virginia A. Smith, City Clerk

By: \_\_\_\_\_  
Jim Landon, City Manager

Date: \_\_\_\_\_

**EXHIBIT A**

Camera Locations

After thirty (30) days following the Effective Date, cameras shall be located at the following sites: